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HUMAN RIGHTS COMMITTEE
Sixty-fourth session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Concluding observations of the Human Rights Committee

Japan

1. The Committee considered the fourth periodic report of Japan (CCPR/C/115/Add.13 and Corr. 1) at its 1714th to 1717th meetings (CCPR/SR.1714-1717), held on 28 and 29 October 1998, and adopted the following concluding observations at its 1726th and 1727th meetings (CCPR/C/SR.1726-1727), held on 5 November 1998.

A. Introduction

2. The Committee expresses its appreciation for the frank and forthright replies given by the delegation to the issues raised by the Committee and the clarifications and explanations given in answer to the oral questions put by the members of the Committee. The Committee is also appreciative of the presence of the large delegation representing various branches of the Government, which demonstrates the seriousness of the State party in meeting its obligations under the Covenant. The Committee also commends the State party for having given wide publicity to its report and to the work of the Committee. It welcomes the large number of lawyers and non-governmental organizations present during the discussion of the report.

B. Positive aspects

3. The Committee commends the Government for the ongoing process of bringing its legislation into line with the provisions of the Covenant. It welcomes the enactment of the Law on the Promotion of Measures for Human Rights Protection, as well as amendments to other laws such as the Equal

Employment Opportunities Law, the Standard Labour Law, the Immigration Control and Refugee Recognition Act, the Penal Code, the Child Welfare Law, the Election Law and the Entertainment Business Law, and the draft bill aimed at punishing Japanese nationals involved in child prostitution and child pornography.

4. The Committee notes with satisfaction the establishment, at Cabinet level, of the Council for the Promotion of Gender Equality, aimed at investigating and developing policies for the achievement of a gender-equal society and its adoption of the Plan for Gender Equality 2000. The Committee also notes the measures being taken by the human rights organs of the Ministry of Justice to deal with the elimination of discrimination and prejudice against students at Korean schools in Japan, children born out of wedlock and children of the Ainu minority.

5. The Committee welcomes the abolition of restrictions on women's eligibility to take the national public service examination, the abolition of discriminatory compulsory retirement, and of dismissals on grounds of marriage, pregnancy or childbirth.

C. Principal subjects of concern and recommendations

6. The Committee regrets that its recommendations issued after the consideration of the third periodic report have largely not been implemented.

7. The Committee stresses that protection of human rights and human rights standards are not determined by popularity polls. It is concerned by the repeated use of popularity statistics to justify attitudes of the State party that may violate its obligations under the Covenant.

8. The Committee reiterates its concern about the restrictions which can be placed on the rights guaranteed in the Covenant on the grounds of "public welfare", a concept which is vague and open-ended and which may permit restrictions exceeding those permissible under the Covenant. Following upon its previous observations, the Committee once again strongly recommends to the State party to bring its internal law into conformity with the Covenant.

9. The Committee is concerned about the lack of institutional mechanisms available for investigating violations of human rights and for providing redress to the complainants. Effective institutional mechanisms are required to ensure that the authorities do not abuse their power and that they respect the rights of individuals in practice. The Committee is of the view that the Civil Liberties Commission is not such a mechanism, since it is supervised by the Ministry of Justice and its powers are strictly limited to issuing recommendations. The Committee strongly recommends to the State party to set up an independent mechanism for investigating complaints of violations of human rights.

10. More particularly, the Committee is concerned that there is no independent authority to which complaints of ill-treatment by the police and immigration officials can be addressed for investigation and redress. The Committee recommends that such an independent body or authority be set up by the State party without delay.

11. The Committee is concerned about the vagueness of the concept of "reasonable discrimination", which, in the absence of objective criteria, is incompatible with article 26 of the Covenant. The Committee finds that the arguments advanced by the State party in support of this concept are the same as had been advanced during the consideration of the third periodic report, and which the Committee found to be unacceptable.

12. The Committee continues to be concerned about discrimination against children born out of wedlock, particularly with regard to the issues of nationality, family registers and inheritance rights. It reaffirms its position that pursuant to article 26 of the Covenant, all children are entitled to equal procection, and recommends that the State party take the necessary measures to amend its legislation, including article 900, paragraph 4, of the Civil Code.

13. The Committee is concerned about instances of discrimination against members of the Japanese-Korean minority who are not Japanese citizens, including the non-recognition of Korean schools. The Committee draws the attention of the State party to General Comment No. 23 (1994) which stresses that protection under article 27 may not be restricted to citizens.

14. The Committee is concerned about the discrimination against members of the Ainu indigenous minority in regard to language and higher education, as well as about non-recognition of their land rights.

15. With regard to the Dowa problem, the Committee acknowledges the acceptance by the State party of the fact that discrimination persists vis-à-vis members of the Buraku minority with regard to education, income and the system of effective remedies. The Committee recommends that the State party take measures to put an end to such discrimination.

16. The Committee is concerned that there still remain in the domestic legal order of the State party discriminatory laws against women, such as the prohibition for women to remarry within six months following the date of the dissolution or annulment of their marriage and the different age of marriage for men and women. The Committee recalls that all legal provisions that discriminate against women are incompatible with articles 2, 3 and 26 of the Covenant and should be repealed.

17. The Committee reiterates the comment made in its concluding observations at the end of the consideration of Japan's third periodic report that the Alien Registration Law, which makes it a penal offence for alien permanent residents not to carry certificates of registration at all times and imposes criminal sanctions, is incompatible with article 26 of the Covenant. It once again recommends that such discriminatory laws be abolished.

18. Article 26 of the Immigration Control and Refugee Recognition Act provides that only those foreigners who leave the country with a permit to re-enter are allowed to return to Japan without losing their residents status and that the granting of such permits is entirely within the discretion of the Minister of Justice. Under this law, foreigners who are second- or third-generation permanent residents in Japan and whose life activities are based in Japan may be deprived of their right to leave and re-enter the

country. The Committee is of the view that this provision is incompatible with article 12, paragraphs 2 and 4, of the Covenant. The Committee reminds the State party that the words "one's own country" are not synonymous with "country of one's own nationality". The Committee therefore strongly urges the State party to remove from the law the necessity to obtain a permit to re-enter prior to departure, in respect of permanent residents like persons of Korean origin born in Japan.

19. The Committee is concerned about allegations of violence and sexual harassment of persons detained pending immigration procedures, including harsh conditions of detention, the use of handcuffs and detention in isolation rooms. Persons held in immigration detention centres may remain there for periods of up to six months and, in some cases, even up to two years. The Committee recommends that the State party review the conditions of detention and, if necessary, take measures to bring the situation into compliance with articles 7 and 9 of the Covenant.

20. The Committee is gravely concerned that the number of crimes punishable by the death penalty has not been reduced, as was indicated by the delegation at the consideration of Japan's third periodic report. The Committee recalls once again that the terms of the Covenant tend towards the abolition of the death penalty and that those States which have not already abolished the death penalty are bound to apply it only for the most serious crimes. The Committee recommends that Japan take measures towards the abolition of the death penalty and that, in the meantime, that penalty should be limited to the most serious crimes, in accordance with article 6, paragraph 2, of the Covenant.

21. The Committee remains seriously concerned at the conditions under which persons are held on death row. In particular, the Committee finds that the undue restrictions on visits and correspondence and the failure to notify the family and lawyers of the prisoners on death row of their execution are incompatible with the Covenant. The Committee recommends that the conditions of detention on death row be made humane in accordance with articles 7 and 10, paragraph 1, of the Covenant.

22. The Committee is deeply concerned that the guarantees contained in articles 9, 10 and 14 are not fully complied with in pre-trial detention in that pre-trial detention may continue for as long as 23 days under police control and is not promptly and effectively brought under judicial control; the suspect is not entitled to bail during the 23-day period; there are no rules regulating the time and length of interrogation; there is no State-appointed counsel to advise and assist the suspect in custody; there are serious restrictions on access to defence counsel under article 39(3) of the Code of Criminal Procedure; and the interrogation does not take place in the presence of the counsel engaged by the suspect. The Committee strongly recommends that the pre-trial detention system in Japan should be reformed with immediate effect to bring it in conformity with articles 9, 10 and 14 of the Covenant.

23. The Committee is concerned that the substitute prison system (Daiyo Kangoku), though subject to a branch of the police which does not deal with investigation, is not under the control of a separate authority. This may increase the chances of abuse of the rights of detainees under articles 9 and 14 of the Covenant. The Committee reiterates its recommendation, made after consideration of the third periodic report, that the substitute prison system should be made compatible with all requirements of the Covenant.

24. The Committee is concerned that rule 4 of the Habeas Corpus Rules under the Habeas Corpus Law limits the grounds for obtaining a writ of habeas corpus to (a) the absence of a legal right to place a person in custody and (b) manifest violation of due process. It also requires exhaustion of all other remedies. The Committee is of the view that rule 4 impairs the effectiveness of the remedy for challenging the legality of detention and is therefore incompatible with article 9 of the Covenant. The Committee recommends that the State party repeal rule 4 and make the remedy of habeas corpus fully effective without any limitation or restriction.

25. The Committee is deeply concerned about the fact that a large number of the convictions in criminal trials are based on confessions. In order to exclude the possibility that confessions are extracted under duress, the Committee strongly recommends that the interrogation of the suspect in police custody or substitute prisons be strictly monitored, and recorded by electronic means.

26. The Committee is concerned that under the criminal law, there is no obligation on the prosecution to disclose evidence it may have gathered in the course of the investigation other than that which it intends to produce at the trial, and that the defence has no general right to ask for the disclosure of that material at any stage of the proceedings. The Committee recommends that, in accordance with the guarantees provided for in article 14, paragraph 3, of the Covenant, the State party ensure that its law and practice enable the defence to have access to all relevant material so as not to hamper the right of defence.

27. The Committee is deeply concerned at many aspects of the prison system in Japan which raise serious questions of compliance with articles 2, paragraph 3 (a), 7 and 10 of the Covenant. Specifically, the Committee is concerned with the following:

(a) Harsh rules of conduct in prisons that restrict the fundamental rights of prisoners, including freedom of speech, freedom of association and privacy;

(b) Use of harsh punitive measures, including frequent resort to solitary confinement;

(c) Lack of fair and open procedures for deciding on disciplinary measures against prisoners accused of breaking the rules;

(d) Inadequate protection for prisoners who complain of reprisals by prison warders;

(e) Lack of a credible system for investigating complaints by prisoners; and

(f) Frequent use of protective measures, such as leather handcuffs, that may constitute cruel and inhuman treatment.

28. The Committee is concerned that the Central Labour Relations Commission refuses to hear an application of unfair labour practices if the workers wear armbands indicating their affiliation to a trade union. Such an action contravenes articles 19 and 22 of the Covenant. The Committee's view should be brought to the attention of the Central Labour Relations Commission.

29. Despite the amendment to the Business Entertainment Law, traffic in women and insufficient protection for women subject to trafficking and slavery-like practices remain serious concerns under article 8 of the Covenant. In light of information given by the State party on planned new legislation against child prostitution and child pornography, the Committee is concerned that such measures may not protect children under the age of 18 when the age limit for sexual consent is as low as 13. The Committee is also concerned about the absence of specific legal provisions prohibiting bringing of foreign children to Japan for the purpose of prostitution, despite the fact that abduction and sexual exploitation of children are subject to penal sanctions. The Committee recommends that the situation be brought into compliance with the State party's obligations under articles 9, 17 and 24 of the Covenant.

30. The Committee continues to be gravely concerned about the high incidence of violence against women, in particular domestic violence and rape, and the absence of any remedial measures to eradicate this practice. The Committee is troubled that the courts in Japan seem to consider domestic violence, including forced sexual intercourse, as a normal incident of married life.

31. The Committee, while acknowledging the abolition of forced sterilization of disabled women, regrets that the law has not provided for a right of compensation to persons who were subjected to forced sterilization, and recommends that the necessary legal steps be taken.

32. The Committee is concerned that there is no provision for training of judges, prosecutors and administrative officers in human rights under the Covenant. The Committee strongly recommends that such training be made available. Judicial colloquiums and seminars should be held to familiarize judges with the provisions of the Covenant. The Committee's general comments and the Views expressed by the Committee on communications under the Optional Protocol should be supplied to the judges.

33. The Committee urges the Government to take action on the ground of these concluding observations and to consider them in the preparation of the fifth periodic report. It also recommends that the State party continue reviewing its laws, and making appropriate amendments, so as to bring its legislation into full conformity with the Covenant. The Committee recommends that the State party take measures to provide remedies to victims of violations of human rights and, in particular, that it ratify the Optional Protocol to the Covenant.

34. The Committee expects that in implementing these concluding observations the State party will engage itself in a dialogue with all domestic interested parties, including non-governmental organizations. The Committee urges the State party to ensure the wide dissemination of its report and of these concluding observations.

35. The Committee has fixed the date of submission of Japan's fifth periodic report to be October 2002.